

FIRST REGULAR SESSION

# SENATE BILL NO. 314

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DOLAN.

Read 1st time February 7, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 227.240, RSMo, and to enact in lieu thereof one new section relating to highway construction.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 227.240, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.240, to read as follows:

227.240. 1. The location and removal of all telephone, telegraph and electric light and power transmission lines, poles, wires, **utility facilities** and conduits, and all pipelines and tramways, erected or constructed, or hereafter to be erected or constructed by any corporation, association, or persons, within the right-of-way of any state highway, insofar as the public travel and traffic is concerned, and insofar as the same may interfere with the construction, **improvement**, or maintenance of any such highway, shall be under the control and supervision of the state highways and transportation commission.

2. If **telephone, telegraph, and electric light and power transmission lines, poles, wires, or utility facilities are located within the right-of-way of a proposed highway improvement or construction project**, the [commission or some officer selected by the commission] **director of the department of transportation** shall serve a written notice upon the **owners of** [person or corporation owning or maintaining any] such **utility facilities**, lines, poles, wires, conduits, pipelines, or tramways, which notice shall contain a **project plan [or chart]** indicating the places on the right-of-way at which such **utility facilities**, lines, poles, wires, conduits, pipelines, or tramways

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

may be maintained or relocated. The project plan need only show those portions of the highway construction or improvement that give the project location, the owner's existing utility facilities, and how those facilities will be affected by the improvement. The project plan furnished by the department shall be reviewed by the owner to verify that the owner's utility facilities are shown. If the facilities are not shown, the owner shall mark their location and return the marked up project plan to the department. If the utility facilities are shown, the owner shall advise the department by mail and need not return the project plan. The department also shall provide any additional and duplicate plan information needed by the owner to design and lay out the removal, relocation, or adjustment of existing utility facilities and the placement of relocated or additional facilities within the project limits. The notice shall also state the time when the work of hard surfacing said roads or highway improvement is proposed to commence, and shall further state that a hearing shall be had upon the proposed plan of location and matters incidental thereto, giving the place and date of such hearing. The notice also shall include a general description of the work to be done and the desired date for completion of utility facility relocation.

3. Within ninety calendar days after the date of mailing of the notice by the department, the owner shall provide the department with a work plan. The work plan shall include a narrative description of what work will be done, whether the work is dependent on work by another entity, whether the work will be done prior to highway construction and which work will be necessary to coordinate with the work of the contractor, when the work will be started, and the length of time in working days required to complete the work. A listing of approvals required by governmental agencies and the expected time schedule to obtain those approvals also shall be provided. If the department determines there is a potential for conflict between work plans, the department shall schedule a meeting that the owners are required to attend to coordinate the work. An additional thirty calendar days will be allowed to furnish the work plan if coordination is required with other utility facility owners.

4. The department shall review and approve a work plan submitted under subsection 3 of this section for compliance with permit

requirements and to ensure that the work plan is reasonable. The director may reduce the number of working days for relocating utility facilities suggested by the owner if the director determines that such a schedule would cause undue delay. Approval of a work plan under this subsection does not waive any requirement for approval of the work plan by any other governmental agency. The utility facility owner shall notify the department when all required approvals have been obtained. After receiving notification that all approvals have been obtained, the department shall notify the owner of the date on which the owner may proceed with its utility facility relocation work. The department may require utility facility owners to provide monthly progress reports regarding the status of the relocation of its utility facility until its relocation is completed.

[Immediately after such hearing the said owner shall be given a notice of the findings and orders of the commission and shall be given a reasonable time thereafter to comply therewith; provided, however, that the effect of any change ordered by the commission shall not be to remove all or any part of such lines, poles, wires, conduits, pipelines or tramways from the right-of-way of the highway.]

**5. The removal and relocation of [the same] utility facilities, lines, poles, wires, conduits, pipelines, or tramways shall be made at the cost and expense of the owners thereof unless otherwise provided by said commission, and in the event of the failure of such owners to remove the same at the time so determined they may be removed by the state highways and transportation commission, or under its direction, and the cost thereof collected from such owners, and such owners shall not be liable in any way to any person for the placing and maintaining of such lines, poles, wires, conduits, pipelines, and tramways at the places prescribed by the commission. If any owner fails to comply with and implement the provisions of this section, the contractor, with the consent of the commission or director, may undertake highway construction without liability to such owner for damages to the owner's utility facilities, lines, poles, wires, conduits, pipelines, or tramways. The owner also shall be liable to the department's contractor for damages resulting from such failure and delay.**

**6. If the owner fails to complete the required installation,**

relocation, or adjustment of its utility facilities within the time period prescribed pursuant to subsection 4 of this section, the director of the department of transportation shall have the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars for each calendar day after the scheduled deadline that the owner fails to complete the required installation, relocation, or adjustment. The failure of another owner to sufficiently complete its required installation, relocation, or adjustment of utility facilities that interfere with the owner's relocation plan shall constitute an affirmative defense to the assessment of a civil penalty pursuant to the provisions of this section. No civil penalty shall be assessed for delays that result from catastrophic weather events or acts of God.

[3.] 7. The commission or director is authorized in the name of the state of Missouri, to institute and maintain, through the attorney general, such suits and actions as may be necessary to enforce the provisions of this section. Any corporation, association, or the officers or agents of such corporations or associations, or any other person who shall erect or maintain any such **utility facilities**, lines, poles, wires, conduits, pipelines, or tramways, within the right-of-way of such roads which are hard-surfaced, which are not in accordance with such orders of the commission or director, shall be deemed guilty of a misdemeanor.

8. The governing authority of each city or county shall have the authority to adopt ordinances, resolutions, or regulations consistent with this section regarding the relocation of utility facilities located within the rights-of-way of highways or roads under their respective jurisdiction.

9. As used in this section, the following words mean:

(1) "Owner", the owner, operator, user, or joint user of a utility facility;

(2) "Relocate" or "relocation", the adjustment of utility facilities, lines, poles, wires, conduits, pipelines, or tramways as the commission or director may determine is necessary in connection with the construction, reconstruction, or improvement of a state highway. Relocation includes:

(a) Removing and reinstalling the utility facility, including necessary temporary facilities;

(b) Moving, rearranging, or changing the type of existing utility facilities; and

(c) Taking any necessary safety and protective measures;

(3) "Utility facility", any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment, or other structure, whether aboveground or underground, used to transmit, distribute, or deliver telegraph or telecommunication services, water, cable television services, electricity, gas, liquids, steam, sewerage, or other materials to the public;

(4) "Work plan", a plan provided to the department by the owner to carry out utility facility alteration or relocation work to accommodate a construction or highway project of the department.

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